IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7988 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

RAJKUMAR RUPLAL VIRVAL(BOLIVAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr S K Patel, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order of detention dated 21.6.2000 passed

by the District Magistrate, Surat in exercise of powers conferred on him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

Rule was issued. Mr S K atel, learned AGP appears for respondents No.1,2 and 3. Mrs P J Davawala, learned Addl. Standing Counsel for Union of India appears for respondent no.4.

I have heard the learned Advocates for the parties and have perused the papers.

2. One of the grounds raised on behalf of the petitioner is that the petitioner had submitted representation on 1.7.2000 at Annexure 'C' addressed to the District Magistrate, Surat. That the District Magistrate received the same on or about 4.7.2000 in terms of the postal acknowledgment at annexure 'D'. That in the meantime, the order of detention passed by the District Magistrate was approved by the State Government on 1.7.2000 and, therefore, the District Magistrate was required to forward the said representation to the State Government. The District Magistrate had no power to deal with the said representation which was received after the approval of the State Government. That the District Magistrate did not forward it to the State Government. In para 6 of the affidavit filed by the State Government it is stated that no such representation dated 1.7.2000 was received by the Government, and therefore, it could not be considered. It seems that the said representation dated 1.7.2000 has been totally lost and it was not considered at all by the detaining authority or by the Government. It is very clear that the petitioner has a valuable right of being considered with respect to his detention, statutory as well as constitutional right under Article 22(5) of the Constitution of India. It is a matter of record that the representation was sent on 1.7.2000 and it was received on 4.7.2000 by the District Magistrate, Surat. The record shows that the representation was not forwarded to the Government. This fact cannot be disputed. It is, therefore, clear that the petitioner's right of being considered on the strength of representation has been taken away. In that view of the matter, further detention of the petitioner cannot be treated to be legal.

3. In view of the aforesaid, this petition is allowed. The order of detention dated 21.6.2000 passed by the District Magistrate, Surat is quashed and set aside. The detenu is directed to be set at liberty

forthwith if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

14.9.2000   [D P Buch, J.]
msp.